

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD DELENE and NANCY DELENE,

Plaintiffs/Counterdefendants-
Appellees,

v

D. HAYWOOD & ASSOCIATES, P.C. f/k/a
HAYWOOD HARRISON, P.C.,

Defendant/Counterplaintiff-
Appellant.

UNPUBLISHED

May 18, 2006

No. 267209

Baraga Circuit Court

LC No. 05-005461-CH

Before: Sawyer, P.J., and Kelly and Davis, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order granting plaintiffs' motion for summary disposition of defendant's equitable subrogation and unjust enrichment counterclaims. We affirm.

I. Facts

In the mid-1990s, plaintiffs retained defendant to perform legal work in a property dispute between plaintiffs and the State of Michigan. Plaintiffs paid defendant a portion of the charged legal fees, but contested other portions on the bases that (1) there was "no possible way" for defendant to have billed "well over \$100,000 in legal fees" and (2) there were issues regarding whether defendant actually performed the work claimed. Defendant filed a complaint against plaintiffs alleging account stated, quantum meruit, unjust enrichment, and breach of contract. A judgment was ultimately entered against plaintiffs for \$122,297.31.

In June 1999, a sheriff's sale of plaintiffs' property was held and a sheriff's deed was recorded reflecting that defendant held title to the property. Defendant then filed a quiet title action. In March 2003, however, the trial court dismissed defendant's quiet title action because defendant had not complied with statutory requirements for the sheriff's sale. Defendant recommenced the execution process. In June 2005, a second sheriff's sale ensued and the property ultimately sold to third parties for \$168,300. In the time between the first sheriff's sale and the final sheriff's sale, defendant made approximately \$102,038.96 in tax and mortgage payments on the property.

Plaintiffs filed the complaint initiating this case seeking a declaration that they are lawful owners of the property and defendant had no right to execute against or cause a sale of their property. Defendant filed a countercomplaint alleging unjust enrichment and equitable subrogation for the tax and mortgage payments made on the property.

The parties filed motions for summary disposition each requesting that the trial court dismiss the other parties' claims and grant summary disposition in their favor on their own claims. The trial court entered an order granting summary disposition in defendant's favor with respect to plaintiffs' claims. It also granted summary disposition in plaintiffs' favor with respect to defendant's claims. The trial court gave no reasoning on the record, in its order, or in a separate opinion.

II. Analysis

A. Standard of Review

We review de novo a trial court's decision on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence submitted by the parties, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002).

B. Equitable Subrogation

Defendant first contends that the trial court erred in dismissing its equitable subrogation claim. We disagree.

“Equitable subrogation is a legal fiction through which a person who pays a debt for which another is primarily responsible is substituted or subrogated to all the rights and remedies of the other. It is well-established that the subrogee acquires no greater rights than those possessed by the subrogor, and that the subrogee may not be a ‘mere volunteer.’” [*Hartford Accident & Indemnity Co v Used Car Factory, Inc*, 461 Mich 210, 215; 600 NW2d 630 (1999), quoting *Commercial Union Ins Co v Medical Protective Co*, 426 Mich 109, 117; 393 NW2d 479 (1986) (opinion by WILLIAMS, C.J.).]

To avoid being a volunteer, a subrogee must be acting to fulfill a legal or equitable duty. *Id.* at 216, quoting *Beatty v Hertzberg & Golden, PC*, 456 Mich 247, 254-255; 571 NW2d 716 (1997). “[E]quitable subrogation should be applied in new contexts only with caution.” *Hartford, supra* at 216.

In this case, there are no circumstances or conditions that warrant the application of equitable subrogation. To satisfy the judgment against plaintiffs, defendant attempted to execute against plaintiffs' property. After failing to comply with the statutory requirements the first time, defendant ultimately succeeded in executing against plaintiffs' property approximately six years later. However, between the first improper sheriff's sale in June 1999 and the final sheriff's sale in June 2005, defendant made tax and mortgage payments of \$102,038.96.

Defendant contends that the tax and mortgage payments were involuntary because they were required to secure the property for execution and sheriff's sale. We disagree. Although defendant experienced difficulty collecting payments due from plaintiffs and allegedly could find no other property against which to execute, defendant nonetheless was at liberty to pay or not to pay the taxes and mortgage payments owed on the property. The fact that defendant may have experienced further difficulty in satisfying the judgment against plaintiffs had he not made these payments did not render these payments involuntary. Defendant was under no legal or equitable duty to make the payments. Defendant was simply presented with a difficult situation.

Defendant relies on *GF Sanborn Co v Alston*, 153 Mich 456; 116 NW2d 1099 (1908), for the proposition that "a party protecting its interest from a tax sale is entitled to be reimbursed for the taxes it paid." However, the Court in *GF Sanborn* held that a tax sale purchaser, who paid taxes between the time of the tax sale and reconveyance to the owners, was entitled to reimbursement from the owners for the taxes paid. *Id.* In this case, defendant was not the purchaser of the property at a tax sale nor was he the purchaser of the property at the sheriff's sale nor is there any evidence that the property was reconveyed to plaintiffs after defendant made the payments. Therefore, *GF Sanborn* is not applicable.

In regard to defendant's equitable subrogation claim, there was no genuine issue of material fact and plaintiffs were entitled to judgment as a matter of law. The trial court did not err in dismissing this claim.

C. Unjust Enrichment

Defendant next contends that the trial court erred in dismissing its unjust enrichment claim. We again disagree.

Unjust enrichment is a remedy by which "the law sometimes indulges in the fiction of a quasi or constructive contract, with an implied obligation to pay for benefits received to ensure that exact justice is obtained." *Kammer Asphalt Paving Co v East China Twp Schools*, 443 Mich 176, 185-186; 504 NW2d 635 (1993), quoting *Detroit v Highland Park*, 326 Mich 78, 100; 39 NW2d 325 (1949), quoting *Cascadeh v Magryta*, 247 Mich 267, 270; 225 NW 511 (1929) (internal punctuation omitted). Unjust enrichment requires a plaintiff to prove the receipt of a benefit by the defendant from the plaintiff, and an inequity resulting to the plaintiff because of the retention of the benefit by the defendant. *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003). The equitable doctrine of unjust enrichment must be employed with caution because it "vitiates normal contract principles." *Kammer, supra* at 186.

Defendant has not demonstrated that plaintiffs received any benefit from defendant's tax and mortgage payments on the property. In its brief analysis of this issue, defendant asserts that, because it made these payments, plaintiffs' liability for the payments has been cleared. Defendant also asserts that it should not be "forced to bear this financial burden when the liability stems solely from [plaintiffs'] unpaid debts." However, "[u]nder Michigan law, a purchaser at a sheriff's sale takes the property subject to all prior liens." *First of America Bank-Oakland Macomb, NA v Brown*, 158 Mich App 76, 80; 404 NW2d 706 (1987); see also *Midwest Bank v O'Connell*, 158 Mich App 565, 569; 405 NW2d 201 (1987). Accordingly, under the circumstances presented, the tax sale purchaser, not plaintiffs, benefited from the payments defendant made. Although plaintiffs may have sustained a benefit from defendant's payments

under different circumstances (for example, if they had redeemed the property or it was reconveyed to them), no such circumstances have been demonstrated by evidence in the lower court record. Therefore, in regard to defendant's unjust enrichment claim, there was no genuine issue of material fact and plaintiffs were entitled to judgment as a matter of law. The trial court did not err in dismissing this claim.

Affirmed.

/s/ David H. Sawyer
/s/ Kirsten Frank Kelly
/s/ Alton T. Davis